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TAX TREATMENT OF CEMETERY PERPETUAL CARE FUND TRUSTS AND INTERNAL REVENUE SERVICE ADMINISTRATIVE MODIFICATIONS

SEPTEMBER 28 (legislative day, SEPTEMBER 24), 1976.—Ordered to be printed

Mr. LONG, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 1142]

The Committee on Finance, to which was referred the bill (H.R. 1142) to amend the Internal Revenue Code of 1954 to provide for a distribution deduction for certain cemetery perpetual care fund trusts, having considered the same, reports favorably thereon with amendments and recommends that the bill do pass.

I. SUMMARY

The House-passed bill, H.R. 10612, provides a special deduction in computing the income of a cemetery "perpetual care fund" for amounts expended by the fund for the care and maintenance of cemetery property in which interment rights have been sold. In order to qualify as a "perpetual care fund" under this provision, the fund must be a trust established pursuant to local law by a taxable cemetery for the care and maintenance of the cemetery. The deduction allowed is to be the amount actually distributed during the year for such care and maintenance (but not more than $5 per gravesite).

The committee agreed to the House-passed bill but made the provisions effective October 1, 1977, for amounts distributed during taxable years ending after 1963. In addition, the committee added two amendments requested by the Internal Revenue Service which deal with certain administrative provisions enacted as a part of the Tax Reform Act of 1976. The first amendment moves forward the effective date of three administrative provisions in the bill (jeopardy and termination assessments, administrative summons, and the minimum exemption from levy) from December 31, 1976, to February 28, 1977, in order to allow the Internal Revenue Service adequate time to prepare for the administration of these provisions. The second amendment provides that the amounts received by the Internal Revenue Service as reimbursement for costs incurred in making future private letter rulings and certain other determinations available for public inspection are to be treated as reimbursable to the Internal Revenue Service appropriation.

II. General Statement

A. CEMETERY PERPETUAL CARE TRUST FUNDS

Present law

Perpetual care funds generally are created as irrevocable trusts under State law or in accordance with the by-laws and contracts of cemetery companies. They are funded out of a percentage of the gross receipts from the sale of burial lots and crypts. The income of such a trust is applied to the perpetual care and maintenance of the cemetery, burial lots, and mausoleum crypts.

The position of the Internal Revenue Service (at least since 1964) is that a perpetual care fund trust established by a taxable cemetery is subject to tax.[1] The Service has also concluded that the deduction allowed to trusts for income distributed to their beneficiaries (under sec. 651 or 661) is not to be allowed to perpetual care funds because such funds do not have any specific beneficiaries. The Service's position in this regard is that the benefit of the trust is diffused among the owners of the lot, the cemetery companies, and the public in general.

The Court of Claims recently held (*Graceland Cemetery Improvement Fund* v. *U.S.*, 515 F. 2d 763 (Ct. Cl. 1975)) that a corporation formed for the perpetual care of a taxable cemetery was not exempt from Federal income tax (under sec. 501(c)(13)), but was entitled to deduct as ordinary and necessary business expenses all payments made for cemetery care and upkeep.

General reasons for change

Pursuant to State law (in most cases) or legally enforceable by-laws and contracts (in the other cases), many perpetual care funds make regular distributions to taxable cemeteries for the exclusive purpose of the care and maintenance of the gravesites of such cemeteries. The Service's position is that the deduction for income distributed to beneficiaries of trusts is not allowable to perpetual care funds because they do not have any ascertainable beneficiaries.

Because distributions by perpetual care funds for the purpose of the care and maintenance of gravesites are essentially equivalent to distributions on behalf of beneficiaries (gravesite owners, heirs, and general public) the committee believes that a limited deduction should be allowed with respect to such distributions.

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[1] In Rev. Rul. 64–217 (1964–2 CB 153), the Service ruled that a perpetual care fund, the income of which is distributed to a profitmaking cemetery company for use in connection with the maintenance of cemetery sites and burial lots, is not entitled to exemption from Federal income tax under section 501(c)(13).

Explanation of provision

The bill amends one of the trusts and estates income tax provisions (sec. 642) of present law to provide a deduction for amounts distributed by perpetual care fund trusts for the care and maintenance of gravesites. The deduction allowed is to be the amount actually distributed during the year for such care and maintenance (but not more than $5 per gravesite). Since perpetual care funds are established for the care of gravesites that have been previously sold by cemetery companies, the deduction for a taxable year is to apply only for amounts distributed to such companies for the care of gravesites sold before that taxable year. For the same reason, the deductions are to be available only with respect to those distributions for the care and maintenance of gravesites with respect to which the fund actually has an obligation of care and maintenance.

It is the committee's intent that the deduction be allowed only to the extent that the cemetery company actually expends the funds received for the care and maintenance of gravesites. Thus, if the cemetery company were to apply the funds received, for instance, to the payment of officer's salaries, the perpetual care fund trust, to that extent, would not be entitled to a distribution deduction.

The bill provides that the above-described payments by a perpetual care fund trust are to be treated as distributions "solely for purposes of sections 651 and 661." As a result, in general, the gravesite owners, heirs, and general public are not to be treated as trust beneficiaries who would be required to take the distributions into income. Since the taxable cemetery company is not the beneficiary of the perpetual care fund trust, the bill does not change the treatment of the receipt of such amounts by the taxable cemetery company. Consequently, such an amount is to continue to be taxable to the cemetery company as ordinary income (sec. 61) and is not to be treated as a trust distribution in the hands of the cemetery company (secs. 652 and 662). For example, even though the perpetual care fund makes a distribution out of dividend income, tax-exempt interest, or long-term capital gains, the cemetery company is to include in income the total amount, without regard to the dividends received deduction, the exclusion of tax-exempt interest, and the deduction for half of long-term capital gains.

The provisions described above apply to a cemetery care fund only if the fund is taxable as a trust and then only if it was created pursuant to local law by a taxable cemetery corporation for the care and maintenance of cemetery property. The local law requirement relates to the governing law of the relevant jurisdiction (State, district, county, parish, city, etc.), and may take the form of a statute, ordinance, court-created doctrine, or other governmental rule.

Effective date

The provision relating to the tax on cemetery perpetual care trust funds is to be effective October 1, 1977, for amounts distributed during taxable years ending after December 31, 1963. The effective date provision relates to the year in which the Service issued the ruling described above regarding the tax status of perpetual care funds of taxable cemeteries.

B. INTERNAL REVENUE SERVICE ADMINISTRATION PROVISIONS

The committee also added two amendments which were requested by the Internal Revenue Service and which relate to certain administrative provisions provided by the Tax Reform Act of 1976. The first amendment moves the effective dates forward in the case of these administrative provisions in the Tax Reform Act of 1976 in order to allow the Service more time to prepare for the administration of the revisions provided by the Act. The three provisions deal with jeopardy and termination assessments, administrative summons, and the minimum exemption from levy. In the case of each of these provisions, the effective date provided by the Act is December 31, 1976. At the time these provisions were dealt with in both the House and the Senate during the course of the Tax Reform Act, this effective date seemed to allow the IRS adequate time to prepare for the administration of these provisions. However, since the Tax Reform Act was just recently passed by the Congress, the IRS has expressed a concern that the effective date does not allow adequate time and requested that the Service be allowed two additional months to meet the new requirements. As a result, the committee amendment extends the effective date for these three provisions from December 31, 1976, to February 28, 1977.

The second amendment deals with the reimbursement of costs incurred by the Internal Revenue Service in making future private letter rulings and certain other determinations available for public inspection. The Tax Reform Act of 1976 authorizes the IRS to assess actual costs incurred in making this information available for public inspection upon written request. However, under the provision as enacted, the fees that are charged will be paid into the general fund of the Treasury and the IRS will not be entitled to reimbursement for these costs. The committee amendment provides that fees which the IRS receives for publication of private letter rulings and other determinations may be treated as reimbursable to the IRS appropriation. The amounts received as fees will be deposited into a special account which may be used to reimburse appropriations granted to cover the costs incurred in performing these services or supplying these materials.

Effective date

The amendments relating to the administrative provisions are to take effect on the date of the enactment of the Tax Reform act of 1976.

III. Costs of Carrying Out the Bill and Vote of the Committee in Reporting H.R. 1142

Revenue cost

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs incurred in carrying out H.R. 1142. The committee estimates that the provision dealing with the tax treatment of cemetery perpetual care fund trusts will have at most a small effect (under $1,000,000) on the revenues. The committee amendment dealing with the Internal Revenue Service administrative provisions do not have any effect on the revenues. The Treasury Department agrees with this statement.

In accordance with section 403 of the Congressional Budget Act of 1974, the Director of the Congressional Budget Office has not made an estimate or comparison of the estimates of the cost of H.R. 1142, but has examined the committee's estimates and agrees with the methods and the dollar estimates resulting therefrom.

Vote of the committee

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee on the motion to report the bill.

The bill as amended, was ordered reported by the committee by a voice vote.

Tax expenditures

With respect to the effects of the committee amendment on tax expenditures during the next five fiscal years, the following statement is made:

In accordance with section 308(a)(2) of the Congressional Budget Act of 1974, after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by this bill involve no new budget authority or new or increased tax expenditures.

IV. Changes in Existing Law

In the opinion of the committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, as reported).

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